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STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
PUBLIC HEARING FOR TEMPORARY WAIVER REGULATIONS

JOE SERNA, JR., CAL/EPA BUILDING
1001 I STREET
2ND FLOOR
COASTAL HEARING ROOM
SACRAMENTO, CALIFORNIA

MONDAY, APRIL 9, 2007
1:00 P.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS ALSO PRESENT

Ms. Rosalie Mulé, Chair

Mr. Jeffrey Danzinger

STAFF

Mr. Robert Holmes, Staff

ALSO PRESENT

Mr. George Eowan, Refuse Removal Council

Ms. Patty Henshaw, Orange County LEA

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 MR. HOLMES: Are we ready? This is a Public
3 Hearing for the Temporary Waiver of Terms Regulations.
4 Historically, these public hearings have been held inside
5 a Committee meeting, but the Board is changing its policy
6 and direction a little bit, so it will be occurring more
7 like this. And for the sake of efficiency and getting the
8 room and the transcriber here, we'll be having it after
9 Committee meetings like this. At least that's the plan.

10 So this is the public hearing for the temporary
11 waiver of terms/regulations, the extension of the 45-day
12 comment period to allow for additional written or oral
13 comment on those regulations. And staff are not intending
14 to respond or have a back and forth give and take on this.
15 It's an extension of the comment period for you to offer
16 this. But we are available to respond to questions for
17 clarification in terms of the regulation.

18 I will point out that we received four comment
19 letters during the 45-day public comment period. And the
20 next step will be to assess the comments that we hear
21 today and those four comment letters determine whether or
22 not staff are proposing any changes to the regulations,
23 come back to the P&C Committee in June either with the
24 request to go out for an additional 15-day comment period
25 or to request adoption of the regulations.

1 Okay. Any questions about any of the policy or
2 procedure? I'm speaking into the microphone for two
3 reasons. One is so the transcriber can hear us clearly
4 and make sure she gets all that. Also this is being
5 broadcast one way audio broadcast out on the Internet for
6 folks to listen.

7 So with that, I will open it up to public
8 comment. Just come on up to the microphone stand, or you
9 can use this one, too.

10 MS. HENSHAW: I'm Patty Henshaw with Orange
11 County LEA.

12 We're one of the groups that sent in comment
13 letters. Also, our county operator which runs all our
14 landfills sent in a letter stating the same things I'm
15 going to state now.

16 First of all, I want to give a little history
17 that I've been with the LEA program since 1992. And I was
18 on the original stakeholders group that kind of looked at
19 this issue and helped put together these regulations and
20 the purpose for these regulations for temporary waivers.

21 And we've had some experiences with emergency
22 waivers and temporary waivers using those regulations.
23 And so that's why I'm here today to offer some suggestions
24 for changes in the proposed regulations.

25 One of them is Orange County has had two labor

1 strikes. And I know Sacramento County had one themselves.
2 And we want to remove the restriction to use these waivers
3 during or after a labor strike. LEA needs to be focused
4 on public health issues, not get involved with the
5 politics of what's happening with the labor strike. And
6 so when we have these strikes at some point, our health
7 officer gets very concerned when there's trash left on the
8 streets.

9 The LEA needs to be looking at the situation from
10 a public health stance and determining if there's a need
11 to allow facilities to stay open longer or more days or
12 increase their tonnage in order to accommodate the
13 impacts. Usually the impacts is more after the labor
14 strike when they're trying to get back to normal. So we
15 need to be neutral in labor strikes. So I'd like that to
16 be removed.

17 Another thing that we'd like to remove is the
18 failure on the part of the operator or local government to
19 plan for foreseeable future events. When it comes to
20 competitive markets, I know George Eowan will speak more
21 on that. But again, the LEA is trying to remain neutral
22 in the politics of solid waste as much as possible. So we
23 need to focus on the issue at hand. Let's get the solid
24 waste, the trash off the streets, where it needs to go,
25 and not get involved with market issues and competitive

1 issues as much as possible.

2 And then finally, there's been some changes to
3 the regulations that allow the Executive Director to
4 condition, limit, suspend, or terminate the stipulated
5 agreements for temporary waiver. We want to leave the
6 existing language in because the bar is very high. The
7 Executive Director has to show that there's actually harm
8 to public health before he can do that. We think that's
9 appropriate, because this is a local issue. The LEAs as
10 the local enforcement agency is looking at the local
11 conditions, talking to their health officer possibly,
12 other operators, is more in tune to what's going on. When
13 an operator comes to us and says, in good faith, can we do
14 this? And the LEA says, yes. And there's a stipulated
15 agreement with both parties signing, then it would be
16 inappropriate for now the LEA to go back and say, oh, the
17 Executive Director has terminated our waiver. And worse
18 yet, you're going to get a violation for going over your
19 tonnage because now you don't have an existing waiver.

20 When the operator comes to us with good faith,
21 they don't want violations. So it's not appropriate for
22 us now to get involved in that situation with the
23 Executive Director kind of second-guessing our reasons for
24 the temporary waiver and coming in.

25 I want to remind everybody that if the general

1 public or labor union or a competitor for solid waste
2 doesn't like what the LEA does, they can appeal it to our
3 hearing panel. So there's an appeal process already set
4 in law that it can go. And if the Executive Director
5 doesn't like how we're handling and using the regulations,
6 then there's already in regulation a whole process and
7 procedure to evaluate the LEA and put them on some kind of
8 work plan if they're inappropriately using the
9 regulations.

10 Since we already have existing regulations that
11 allow kind of an oversight of the use of temporary waiver
12 regulations, I don't think there's a need to within the
13 regulations to further monitor how they're being used. I
14 think they're good regulations. They need to stay in
15 place. But with these changes I think it would be best
16 serve the community. Thank you.

17 MR. EOWAN: I'm George Eowan representing
18 California Refuse Removal Council.

19 I think the one thing to keep in mind here is
20 that the purpose of -- at least one of the major purposes
21 of these regulations is to make sure that the existing
22 infrastructure, the collection and processing disposal
23 system is not -- when it's disrupted for some reason
24 that's unanticipated that the things can go forward as
25 usual and not be causing any harm to the environment or

1 public health and safety. And I think that's primarily
2 what we're trying to accomplish with these.

3 And there are certain circumstances where this
4 occurs, something happens out of the ordinary that we
5 aren't anticipating, and we find that the existing system
6 gets disrupted and we have to adjust for that. And that's
7 really what we're looking for here. In terms of the
8 private sector and operations, it doesn't really, you
9 know, benefit us to have a temporary waiver and allow us
10 to have the opportunity to handle an additional amount for
11 a very short period of time. It's more of the opportunity
12 to allow us to service the communities in which we work.
13 That's kind of where we're coming from on this.

14 The three issues we raised in our comment letter
15 were the same that Ms. Henshaw has raised. The labor
16 strike issue, she's covered it very well. And we would
17 agree with that point that in that situation it's
18 something beyond our control at least to some extent. And
19 if it causes a situation where we're going to be receiving
20 more waste at a facility over a short period of time, we
21 do think that that's important. I don't even know really
22 what the history of that is and why it's in the existing
23 law that you would specify that. But just in terms of
24 sort of practical reasoning, you know, it can disrupt a
25 system in a significant way. And I don't know why we'd

1 want to tie our hands when it could affect the public
2 health and safety of the environment.

3 Also on the Executive Director level, being a
4 former Executive Director, I can tell you you don't want
5 to have unilateral control over everything without some
6 sort of ability to show cause, show your reasons why. And
7 that's why we'd like the harm provision to remain in.
8 It's not that we're trying to tie the Executive Director's
9 hands. But on the other hand, there ought to be some
10 accountability relative to the public health and safety
11 and the environment.

12 And then finally, on the unexpected closure
13 issue, I know there's been a great deal of discussion from
14 time to time in the past regarding the operator and LEA's
15 ability to anticipate unexpected closures. And I'm sure
16 there are instances where one could anticipate a closure.
17 But then there are certainly situations where a facility
18 has closed and it's not anticipated and it is unexpected.
19 I've been involved in those situations myself with some
20 clients, and it's particularly the case when there is
21 another governmental agency. I don't even want to say
22 regulatory agency, because sometimes it's beyond a
23 regulatory agency, as in the case of an IRS closing a
24 facility. There's just no way we would know that.

25 And, again, it disrupts the system. It redirects

1 the waste stream into some other area. And when that
2 means that a facility down the road so to speak all of a
3 sudden has to accept an additional amount over a short
4 period of time -- we're only talking 90 days -- that that
5 seems to make sense to us to allow that to happen. So for
6 those reasons, I think we would put forward those three
7 issues as something for you to consider. Thank you.

8 MR. HOLMES: Okay. Anyone else wishing to
9 comment? That's not quite a record, but it's close to it.
10 So thank you. And again, next step is for staff to return
11 to the P&C Committee in June with either a request for an
12 additional 15-day comment period or a request for
13 adoption. Thank you.

14 (Thereupon the California Integrated Waste
15 Management Board Public Hearing for Temporary
16 Waiver Regulations adjourned at 1:17 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 21st day April, 2007.

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22 TIFFANY C. KRAFT, CSR, RPR

23 Certified Shorthand Reporter

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